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**RECEIVED** APR 23, 1997

**APR 23 1997**

Mr. William F. Caton, Acting Secretary  
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Federal Communications Commission  
Office of Secretary

In the Matter of:

Usage of the Public Switched  
Network by Information Service  
and Internet Access Providers

CC Docket No. 96-263

Dear Mr. Caton:

Enclosed are an original and sixteen copies plus two extra public copies and a diskette copy of the Reply Comments of Cincinnati Bell Telephone Company in the above referenced proceeding. A duplicate original copy of this letter and attached Reply Comments is also provided. Please date stamp this as acknowledgment of its receipt and return it. Questions regarding these Comments may be directed to Patricia Rupich at the above address or by telephone on (513) 397-6671.

Sincerely,

David L. Meier

Enclosure

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Cincinnati Bell Telephone Company  
April 23, 1997

Before the  
**FEDERAL COMMUNICATIONS COMMISSION**  
Washington, D.C. 20554

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**APR 23 1997**

Usage of the Public Switched )  
Network by Information Service )  
and Internet Access Providers )

Federal Communications Commission  
Office of Secretary  
CC Docket No. 96-263

**REPLY COMMENTS OF CINCINNATI BELL TELEPHONE COMPANY**

On March 24, 1997, Cincinnati Bell Telephone Company (CBT) and numerous other parties filed initial comments in response to the Commission's December 24, 1996 Notice of Inquiry ("NOI") in the above-captioned proceeding.<sup>1</sup> CBT files these reply comments to address various issues raised in the initial comments.

**I. Introduction**

In its initial comments, CBT indicated that the major impediment to moving data traffic off the public switched telephone network (PSTN), and onto more efficient packet-switched networks, is the inefficient pricing of services provided via the PSTN to enhanced service providers (ESPs), which has resulted from the existing access charge exemption. This opinion was widely supported in the comments filed in this proceeding by most parties except

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<sup>1</sup> In the Matter of Access Charge Reform; Price Cap Performance Review for Local Exchange Carriers; Transport Rate Structure and Pricing; and Usage of the Public Switched Network by Information Service and Internet Access Providers, CC Docket Nos. 96-262, 94-1, 91-213 and 96-263, Notice of Proposed Rulemaking, Third Report and Order, and Notice of Inquiry, (FCC 96-488), released December 24, 1996 (hereinafter referred to as the "NOI").

information and Internet service providers (ISPs) and users. Another significant difference between the ESPs/ISPs and other parties in this proceeding is whether ESPs/ISPs should be treated as end-users or whether they should be treated in the same manner as other providers of interstate telecommunications services. Regardless of their views on the efficiency of the current pricing structure and current classification of ESPs/ISPs, virtually all parties, including information and Internet service providers agree that the key to developing more efficient data networks is to let the market dictate the solutions, rather than selecting specific solutions through rules imposed by regulators.

In these reply comments, CBT addresses two issues raised in the comments that it believes deserve particular attention. These issues are: (1) claims that under terms of mutual compensation agreements LECs must pay CLECs for calls to ESPs/ISPs which "terminate" on the CLEC's network; and (2) suggestions that ESPs/ISPs should be able to purchase unbundled access elements.

## **II. Reciprocal Compensation Is Inappropriate In the Case of ESP/ISP Traffic**

In its comments, SNET argues that "ESPs/ISPs and CLECs are perversely motivated by the Commission's mutual compensation rules to terminate as much traffic to ISPs on the CLEC network as possible, while originating no traffic whatsoever."<sup>2</sup> However, CBT submits that the situation SNET describes should not occur because as Bell Atlantic and NYNEX indicate, "ISP traffic is not eligible for reciprocal compensation, because such traffic is overwhelmingly

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<sup>2</sup> SNET at p. 10.

interexchange, not local."<sup>3</sup> By virtue of its interexchange/interstate nature, this traffic does not terminate on ISP and/or CLEC networks. The interexchange/interstate nature of ISP traffic is acknowledged by numerous parties.<sup>4</sup> Arguments that ESPs/ISPs are the same as other businesses which purchase local service fail to recognize that calls to regular business users terminate at the business while calls to ESPs/ISPs are transported by the ESP/ISP to a remote database or Internet site which is usually located out of state. Thus, as many commenters observe, ESPs/ISPs operate in much the same manner as IXC's, transporting traffic from their point of presence (POP) to interstate locations.<sup>5</sup>

Although there may be some instances where calls made to ESPs/ISPs are not interexchange in nature, such instances are the rare exception. Further, making a definitive determination is not administratively practical, nor possible for all calls. By its very nature, Internet traffic is essentially interstate since it terminates in databases throughout the world.<sup>6</sup> As AT&T<sup>7</sup> and Bell Atlantic/NYNEX<sup>8</sup> observe, in cases where the jurisdictional nature of a service cannot be determined, the Commission has recognized that it is appropriate to classify it as interstate.

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<sup>3</sup> Bell Atlantic/NYNEX at p. 13.

<sup>4</sup> See, e.g., CAIS at p. 13; AT&T at pp.28-35; and TCA, Inc. at p. 4.

<sup>5</sup> AT&T at p. 30, TRA at p. 5, ACTA at pp. 4-5.

<sup>6</sup> See, e.g., USTA at p. i; AT&T at pp. 28-29.

<sup>7</sup> AT&T at p. 32.

<sup>8</sup> Bell Atlantic/NYNEX at p. 14.

The fact that the Commission has exempted ESPs from access charges in the current rules does not change the jurisdictional nature of the traffic. Several of the ESP/ISP commenters mistakenly assume that because they are exempt from access charges that their traffic is local and, thus, that they should be considered end-users.<sup>9</sup> However, as TRA's review of the history of the ESP exemption indicates,<sup>10</sup> in creating the ESP exemption, the Commission did not determine that ESP traffic is local, it simply allowed ESPs to purchase services from the local tariffs. In fact, as both TRA's<sup>11</sup> and AT&T's<sup>12</sup> comments demonstrate, the Commission clearly determined that the traffic is interstate and would be subject to access charges if not for the exemption.

CBT observes that even the Information Industry Association, while continuing to support the ESP exemption under the current access charge regime, acknowledges that access charges are nonetheless appropriate after the upcoming access reforms are complete.<sup>13</sup> Furthermore, the Internet Access Coalition's request for unbundling of access implicitly acknowledges that they should in fact be subject to access charges. Thus, by acknowledging that access charges may be appropriate after reforms are complete, CBT submits that ESPs/ISPs implicitly support the position that they should be treated in a manner similar to IXC's, rather than end-users.

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<sup>9</sup> See, e.g., Information Industry Association at p. 5; Hardy & Ellison, P.C. at p. 3.

<sup>10</sup> TRA at pp. 5-11.

<sup>11</sup> TRA at p. 8.

<sup>12</sup> AT&T at p. 3.

<sup>13</sup> Information Industry Association at p. 4.

The FCC's rules classify ESPs as "end users" solely as a means of temporarily allowing them to purchase out of local tariffs rather than access tariffs. This does not, however, change the essential characteristics of ESP/ISP traffic. Because ESPs/ISPs do not terminate traffic, but rather transport traffic to interstate locations, like an IXC, the claims of ESPs/ISPs and/or CLECs relative to reciprocal compensation for termination of ESP traffic must be rejected.

### **III. Calls for Unbundling of Access Must Be Rejected**

CBT urges the Commission to reject the Internet Access Coalition's call for unbundling of access.<sup>14</sup> If an ESP/ISP wants to purchase unbundled elements, it may do so currently by becoming a CLEC and negotiating an interconnection agreement with a LEC. It is telling, however, that the ESPs do not want to take on the corresponding responsibilities of a CLEC. In short, they want the best of both worlds. When it suits them, they want to be considered an end-user and purchase out of the local intrastate tariff, and, when convenient, they want to purchase unbundled elements without being a CLEC.

The unbundling provisions mandated by the Telecommunications Act of 1996 were intended to foster local competition. Even the current access reform proceeding does not contemplate unbundling of access. For the Commission to do so for ESPs/ISPs would be inconsistent with both interconnection and access reform and may pose problems related to discrimination between CLECs, IXCs and ESPs.

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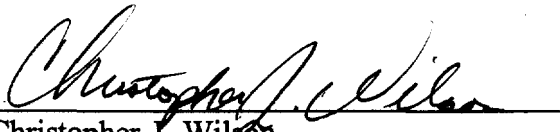
<sup>14</sup> Internet Access Coalition at pp. 35-54.

#### IV. Conclusion

CBT believes that the comments submitted in response to this NOI present sufficient evidence for the Commission to open an NPRM to update the rules that apply to ESPs. In pursuing this issue further the Commission should amend its rules to remove inequities present in the current system, and not create new distortions. In its update of the rules, the Commission should heed the one common theme expressed throughout the comments by virtually all parties - let the market determine the appropriate pricing of services for ESPs and the most efficient technological solutions will follow.

Respectfully submitted,

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Dated: April 23, 1997

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The undersigned hereby certifies that copies of the foregoing Reply Comments of Cincinnati Bell Telephone Company have been sent by first class United States Mail, postage prepaid, or by hand delivery, on April 23, 1997, to the persons listed on the attached service list.

  
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